

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP146-CR

Cir. Ct. No. 2011CF6171

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARENZO ALEXANDER WARE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DENNIS P. MORONEY, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Arenzo Alexander Ware appeals an order that denied him credit for 310 days that he spent in custody before sentencing in this case. Because Ware received credit for the 310 days in custody towards his service of a reconfinement term imposed in another case, and because he is not

entitled to duplicative credit against his consecutive sentence in this case, we affirm.

¶2 The relevant facts are undisputed. Ware was serving a term of extended supervision imposed in Milwaukee County case No. 2009CF3710 when police arrested him on December 28, 2011. Department of Corrections personnel placed Ware on an extended supervision hold. On June 27, 2012, the Department of Administration, Division of Hearings and Appeals, revoked Ware's extended supervision in case No. 2009CF3710, and ordered him to return to prison to serve twenty months and three days of reconfinement. The Division also granted him credit against his reconfinement term for his time in custody from December 29, 2011, until the prison received him and he began serving his reconfinement term there.

¶3 Meanwhile, the State charged Ware in Milwaukee County case No. 2011CF6171, with crimes allegedly committed on December 28, 2011. Ware subsequently resolved the case with a guilty plea to a single charge. On November 2, 2012, the matter proceeded to sentencing, and the circuit court imposed a thirty-month term of imprisonment. The circuit court ordered Ware to serve his sentence in case No. 2011CF6171 consecutively to the reconfinement term he was already serving in Milwaukee County case No. 2009CF3710.

¶4 Ware sought credit against his sentence in Milwaukee County case No. 2011CF6171 for the 311-day period from December 28, 2011, through November 2, 2012. The circuit court granted him credit for the day he spent in custody on December 28, 2011, and otherwise denied the motion on the ground that Ware had already received credit for the remainder of the time against his

reconfinement term in case Milwaukee County case No. 2009CF3710. Ware appeals.

¶5 “A convicted offender shall be given credit toward the service of his or her sentence for all days spent in custody in connection with the course of conduct for which sentence was imposed.” WISCONSIN STAT. § 973.155(1)(a) (2011-12).¹ Wisconsin courts have developed a body of case law applying the statute in various circumstances. See *State v. Tuescher*, 226 Wis. 2d 465, 471-72, 595 N.W.2d 443 (Ct. App. 1999). Whether a defendant is entitled to sentence credit under § 973.155 is a question of law that we review independently of the circuit court. *State v. Lange*, 2003 WI App 2, ¶41, 259 Wis. 2d 774, 656 N.W.2d 480.

¶6 Ware does not dispute that he received credit towards the service of his reconfinement term in Milwaukee County case No. 2009CF3710 for all of the days he spent in custody from December 29, 2011, through the date he was sentenced in Milwaukee County case No. 2011CF6171. Ware claims, however, that he is also entitled to receive credit for those days in custody towards the service of his consecutive sentence in the latter case. He is wrong.

¶7 Our supreme court long ago endorsed the proposition that “[t]he objective with consecutive sentences is to assure that credit is awarded against one, but only one, of the consecutive sentences.” See *State v. Boettcher*, 144 Wis. 2d 86, 101, 423 N.W.2d 533 (1988) (citation omitted). The *Boettcher* court explained:

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[w]e are satisfied, from the purpose of the statute and particularly the absence of any language even suggesting the possibility of dual credits where consecutive sentences are imposed, that the public policy behind the statute impels the conclusion we reach here: That custody credits should be applied in a mathematically linear fashion. The total time in custody should be credited on a day-for-day basis against the total days imposed in the consecutive sentences.

Id. at 100. Because Ware is serving consecutive sentences, *Boettcher* dictates that he may not receive the dual credit he requests.²

¶8 Ware is not assisted in his claim for sentence credit by his citations to *State v. Hintz*, 2007 WI App 113, 300 Wis. 2d 583, 731 N.W.2d 646, and *State v. Presley*, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713. Neither *Hintz* nor *Presley* has any application here; both cases involve the calculation of sentence credit where the circuit court imposed concurrent rather than consecutive terms. See *Hintz*, 300 Wis. 2d 583, ¶4; *Presley*, 292 Wis. 2d 734, ¶15. Similarly inapt is Ware’s citation to *State v. Gilbert*, 115 Wis. 2d 371, 340 N.W.2d 511 (1983). “The only issue the *Gilbert* court addressed was ‘whether confinement in the county jail as a condition of probation, with or without work release privileges, is being in “custody” within the meaning of the sentence credit statute.’” *State v. Johnson*, 2008 WI App 34, ¶17, 307 Wis. 2d 735, 746 N.W.2d 581, *aff’d*, 2009 WI 57, 318 Wis. 2d 21, 767 N.W.2d 207 (citation and one set of brackets omitted). Finally, Ware’s citations to cases decided by courts of foreign jurisdictions are unavailing. His request for sentence credit is governed by well-settled Wisconsin

² Ware does not suggest that his reconfinement term is not a sentence, and any such contention would be meritless. See WIS. STAT. § 304.072(4) (stating that “[t]he sentence of a revoked parolee or person on extended supervision resumes running on the day he or she is received at a correctional institution subject to sentence credit for the period of custody in a ... detention facility pending revocation according to the terms of [WIS. STAT. §] 973.155”).

law that we are not free to disregard. *See Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

